APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 81-7887
Non-argument Calendar

MOSES FRYER,

Petitioner,

versus

DR. CALVIN A. BROWN, Doctor for Fulton Jail; HOSPITAL DEPUTY SHAEFFER; CHIEF JAILER NICK EASON, Fulton County Jail (Staff), Atlanta, GA,

Respondents.

Appeal from the United States District Court for the Northern District of Georgia

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(October 8, 1982)

Before TJOFLAT, JOHNSON and HATCHETT, Circuit Judges.

PER CURIAM:

In February 1976, appellant Moses Fryer, then an inmate of the Fulton County Jail, Atlanta, Georgia, filed an action *pro se* under 42 U.S.C. § 1983 for injunctive and declaratory relief, claiming that prison officials were depriving him of proper medical attention. The case was referred to a magistrate for consolidation with other cases involving conditions of confinement at the Fulton County Jail, but no action was ever taken by the magistrate. In May 1976, Fryer sent a letter informing the magistrate

of his transfer from the Fulton County Jail. In the letter he complained of permanent damage to his health resulting from his eleven-month confinement there and asked for one hundred thousand dollars in damages. Three years later, upon notification of defendants' change of counsel, Fryer sent a second letter to the district court in which he repeated his allegations of incurable damage to his health. The defendants filed a response. Between the filing of defendants' response and dismissal of the lawsuit, two years later, Fryer filed a traverse to the response, a letter-brief, two response-briefs and a demand for trial. All of these submissions ask for three million dollars in damages and all are accompanied by certificates of service.

More than five years after Fryer filed suit, the district court dismissed the action for declaratory and injunctive relief as moot because Fryer was no longer incarcerated at the Fulton County Jail. Noting that the plaintiff was not seeking damages, the court found that no controverted claims remained in the case. Fryer's motion to vacate, which pointed out that he was in fact seeking three million dollars in damages, was denied.

In the absence of reasons such as prejudice to the opposing party, bad faith, futility of amendment, or undue delay, Fed. R. Civ. P. 15(a) requires that leave to amend a complaint be freely given. *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222, 226 (1962). Since the underlying purpose of the rule is to facilitate a full and fair hearing on the merits and not to promote a game of skillful pleading, *see Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 103, 2 L.Ed.2d 85-86 (1957), a court should not refuse to treat a pleading as amended merely because a requested amendment is not labeled "a motion for leave to amend." *See Simons v. United States*, 497

F.2d 1046, 1049 n.2 (9th Cir. 1974). This is especially true for *pro se* litigation, in which the pleadings are to be held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652, 654 (1972).

Although appellant Fryer never labeled his submissions motions for leave to amend, it is clear from reading his filings that he considered his suit to include the allegations he filed with the court after his original complaint. In light of the liberality accorded the pleadings of *pro se* petitioners, the district court should have treated Fryer's request for damages, however denominated, as an amendment to his complaint.[1] *Wright v. El Paso County Jail*, 642 F.2d 134, 135 n.1 (5th Cir. 1981); *McGruder v. Phelps*, 608 F.2d 1023, 1025 (5th Cir. 1979).

Fryer's complaint, as amended, states a claim for damages. Therefore, the fact that he is no longer incarcerated at the Fulton County Jail does not render his suit moot. *Cf. Preiser v. Newkirk*, 422 U.S. 395, 402, 95 S.Ct. 2330, 2334, 45 L.Ed.2d 272, 278 (1975) (suit without damage claim was moot). In reversing and remanding this Section 1983 claim for damages to the district court for disposition of that claim on its merits, we, of course, intimate nothing as to the actual merits, if any, of the claim.

REVERSED and REMANDED.

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[1] Refusal of the court to grant leave to amend in the absence of a justifying reason is an abuse of discretion. *Foman, supra*, 371 U.S. at 182. Defendants were served with all filings made subsequent to their first response. They had actual notice of the contents of the filings, including the claim for damages.

APPENDIX B

[Filed June 25, 1981, Deputy Clerk M. Hall]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MOSES FRYER, *Plaintiff*, v. DR. CALVIN A. BROWN, et al., *Defendants.*	CIVIL ACTION C76-350A

ORDER

Plaintiff filed this action for declaratory and injunctive relief on February 20, 1976, over five years ago. He sought relief from allegedly unconstitutional conditions of confinement and treatment at the Fulton County Jail, where he was then incarcerated. The case was referred to the Magistrate at that time for consolidation with other cases involving similar complaints.

For quite some time, however, petitioner has not been incarcerated at the Fulton County Jail. That being the case, his claim for equitable relief is moot. *Preiser v. Newkirk*, 422 U.S. 395, 95 S.Ct. 2330 (1975). Petitioner is not seeking damages, and thus there are no claims remaining in this case.

Accordingly, this action is DISMISSED as MOOT.

IT IS SO ORDERED, this 25th day of June, 1981.

/s/ MARVIN H. SHOOB

MARVIN H. SHOOB, Judge
United States District Court
Northern District of Georgia

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

[Filed in Clerk's Office U.S.D.C.—Atlanta
July 24, 1981. Ben H. Carter, Clerk. By: L.M.T.,
Deputy Clerk.]

MOSES FRYER,
Plaintiff,

v.

DR. CALVIN A. BROWN, et al.,
Defendants.

CIVIL ACTION
C76-350A

ORDER

Petitioner has filed two motions: (1) motion to vacate the Court's June 25, 1981 order dismissing his case; and (2) motion for leave to proceed on appeal in forma pauperis.

(1) It is unfortunate, and it does not reflect well on this court, that the resolution of this action took well over five years. This is particularly true in light of the very minimal attention given the case. Nonetheless, it is clear that plaintiff's claims are now moot, and petitioner's motion to vacate is DENIED.

(2) This Court cannot certify this appeal as being taken in good faith. *See* Fed.R.App.P. 24(a), §2. While the Court does not doubt petitioner's subjective good faith, mootness is obvious. Petitioner's motion for leave to

proceed on appeal in pauperis is DENIED.

IT IS SO ORDERED, this 24th day of July, 1981.

/s/ MARVIN H. SHOOB

MARVIN H. SHOOB, Judge
United States District Court
Northern District of Georgia

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

[U.S. COURT OF APPEALS, ELEVENTH CIRCUIT
Filed Nov. 12, 1982. Norman E. Zoller, Clerk.]

No. 81-7887

MOSES FRYER,

Petitioner,

versus

DR. CALVIN A. BROWN, Doctor for Fulton Jail; HOSPITAL DEPUTY SHAEFFER: CHIEF JAILER NICK EASON, Fulton County Jail (Staff), Atlanta, GA,

Respondents.

Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion October 8, 11 Cir., 1982, ____ F.2d ____).

(November 12, 1982)

Before TJOFLAT, JOHNSON and HATCHETT, Circuit Judges.

PER CURIAM:

(X) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appel-

late Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ FRANK W. JOHNSON
United States Circuit Judge

REHG-6

XI.

CERTIFICATE OF SERVICE

I, JOHN R. STROTHER, JR., do hereby certify that I have this day served the within and foregoing pleading by mailing a copy thereof to counsel of record in an envelope properly stamped and addressed as follows:

MOSES FRYER
979 Gaston Street, S.W.
Atlanta, Georgia 30310

This 29 day of DECEMBER, 1982.

John R. Strother, Jr.

JOHN R. STROTHER, JR.